



**NORTHERN TERRITORY LEGAL SERVICES LIST**  
**Application for Inclusion**  
Part 3 – NTLSL Deed

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Terms, abbreviations and acronyms	
The following terms, abbreviations and acronyms are used in this document	

*These documents are based on material sourced from the Office of Legal Services Coordination in the Commonwealth Attorney-General's Department. The Northern Territory Government gratefully acknowledges the Office of Legal Services Coordination for allowing use of that material.*

# NORTHERN TERRITORY LEGAL SERVICES LIST DEED

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA CARE OF ITS AGENCY THE  
DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE

AND:

THE PARTICIPANT

DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014

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(a) <b>Agency Agencies</b> or	means, any Territory department, agency or statutory body that is required by Northern Territory Government policy, or elects, to obtain legal services from the NTLSL, and where the context permits or requires, includes the Territory itself, AGD, SFNT acting on behalf of the Territory, and/or an Agency; <i>Note: What constitutes an 'Agency' for the purposes of this definition may change if and when Northern Territory Government policy is amended from time to time. Further guidance on Agencies required or able to obtain legal services from the NTLSL is available through the NTLSL Website</i>
(b) <b>Application for Inclusion (AFI)</b>	means the application submitted by the Participant to the AGD seeking inclusion on the NTLSL, of which Part 2 of the AFI forms Schedule 3 to this Deed;
(c) <b>Business Day</b>	a day which is not a Saturday, Sunday or public holiday in either the place where an action is to be performed, or the place where the reciprocal part of an action is to occur; or if no such location is specified or reasonably ascertainable, in Darwin, Northern Territory, Australia
(d) <b>Client Agency</b>	means the Agency of the Territory which is instructing in relation to the particular Legal Services under a particular Contract, and includes any successor department or Agency;
(e) <b>Conditions for Participation</b>	means the Conditions for Participation set out in Part 1 of the AFI;
(f) <b>Confidential Information</b>	means any Information: <ul style="list-style-type: none"> <li>a. which is by its nature confidential;</li> <li>b. which is designated as confidential by the person by or for whom the information is provided;</li> <li>c. which a party knows, or ought to know, is confidential;</li> <li>d. which is Personal Information; or</li> <li>e. which is agreed between the parties or any of the parties in a Contract as constituting Confidential Information;</li> </ul> and includes the terms (but not the existence) of this Deed, but excludes Information which: <ul style="list-style-type: none"> <li>f. is or becomes public knowledge other than by: <ol style="list-style-type: none"> <li>1. fault of a party;</li> <li>2. breach of this Deed or a Contract; or</li> <li>3. any other unlawful means;</li> </ol> </li> <li>g. was already in the possession of the party who receives the Information (the "<b>Receiving Party</b>") without restriction in relation to disclosure before the other party gave it to</li> </ul>

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	<p>the Receiving Party; or</p> <p>h. had already been independently developed or acquired by the Receiving Party before the other party gave it to the Receiving Party;</p>
(g) <b>Conflict</b>	means any matter, circumstance, interest, or activity directly or indirectly affecting the Participant, its Personnel or subcontractors (including holding any office, possessing any property, or having any professional or contractual obligation) which may, or may appear to, impair the ability of the Participant to provide the Legal Services to the Territory diligently and independently;
(h) <b>Contract</b>	means a contract for the provision of Legal Services formed between a Participant and the Territory by the Territory issuing an Order to the Participant in accordance with this Deed;
(i) <b>Counsel</b>	means a barrister from the private bar, or a legal practitioner engaged as a barrister, briefed to advise or appear in tribunal or court proceedings, but does not include the Solicitor-General;
(j) <b>Date of this Deed</b>	the date the AGD signs this Deed;
(k) <b>Deed</b>	means this NTLSL Deed including any schedules, attachments or documents incorporated by reference;
(l) <b>Default Terms and Conditions</b>	means the terms and conditions of contract provided for in Schedule 2 to this Deed and as modified from time to time by the AGD in accordance with clause 9(d);
(m) <b>Information</b>	includes documents, software, information and data stored, provided or disclosed by any means, whether electronic, written or otherwise, and where relevant, includes information provided verbally or visually;
(n) <b>Intellectual Property</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to Confidential Information;</li> </ul>
(o) <b>Legal Services</b>	means those professional services against each category of legal work that the Participant was appointed to the NTLSL to provide to the Territory on request, but does not include the

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	services of Counsel or professional services obtained from a non-Australian service provider in respect of issues arising in jurisdictions outside of Australia;
(p) <b>Legal Services List (NTLSL)</b>	means the list established by the AGD to enable the Territory to acquire Legal Services;
(q) <b>Legislation</b>	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;
(r) <b>List Rates</b>	means the list rates in Tables 2.1, 2.2 and 2.3 of the Participant's AFI, including (where provided) innovative fee arrangements to provide services on a fixed lump sum fee arrangement, amended from time to time in accordance with the Operational Rules;
(s) <b>Material</b>	means anything in relation to which Intellectual Property rights arise;
(t) <b>Moral Rights</b>	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>
(u) <b>NTLSL Website</b>	means the public website operated by AGD for matters regarding the NTLSL;
(v) <b>Operational Rules or Rules</b>	means the rules governing how the NTLSL will operate set out in Schedule 1 to this Deed, as modified from time to time by the AGD in accordance with clause 9(c);
(w) <b>Operative Date</b>	means 1 October 2014 or such other date as notified in writing by the AGD;
(x) <b>Order</b>	means an order issued by the Territory in accordance with the Deed requesting the provision of Legal Services by the Participant under which a Contract is formed;
(y) <b>Participant</b>	means the party identified as the participant in this Deed;
(z) <b>Performance Reporting Framework</b>	means the performance indicators, performance criteria, reporting requirements and management arrangements provided for in the Operational Rules;
(aa) <b>Personal Information</b>	means Information about a person that is "personal information" as defined in the <i>Information Act</i> which is collected and/or handled by any of the parties in connection with this Deed or a Contract;
(bb) <b>Personnel</b>	means: <ul style="list-style-type: none"> <li>a. in relation to the Participant – any natural person who is a partner, officer, employee, agent or professional advisor of the Participant or of a subcontractor; and</li> <li>b. in relation to the Territory – any natural person, other than</li> </ul>

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	a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor (other than the Participant) of the Territory;
(cc) <b>Procurement Framework</b>	means the Territory's Procurement Framework, consisting of the <i>Procurement Act</i> , the <i>Procurement Regulations</i> , the Procurement Code, and the Procurement Directions, or any successor documents, and as amended from time to time;
(dd) <b>Solicitor for the Northern Territory (SFNT)</b>	means the Solicitor for the Northern Territory, established pursuant to section 8 of the <i>Law Officers Act</i> ;
(ee) <b>Territory</b>	means the Northern Territory of Australia, and according to the context, includes the Territory: <ul style="list-style-type: none"> <li>a. in its own right;</li> <li>b. through any of its Agencies;</li> <li>c. through its Agency the Department of the Attorney-General and Justice (AGD); and/or</li> <li>d. through the SFNT; and</li> </ul>
(ff) <b>Value Add Services</b>	means the value add services listed in the Participant's AFI, or any value add services otherwise agreed to by the parties in a Contract.

## 1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing any gender include all other genders;
- (d) the word "including" is not a word of limitation, and is to be interpreted as though it were immediately followed by the words "but not limited to";
- (e) where a clause in this Deed provides that an action requires consent, approval, agreement, authorisation, permission or words of similar effect ("Consent"), then that Consent must be given or obtained in writing to be effective;
- (f) if an act must be done on a day which is not a Business Day, that act must be done on the immediately following Business Day;
- (g) headings and sub-headings have been included for ease of reference only and this Deed is not to be construed or interpreted by reference to such headings or sub-headings;
- (h) a reference to party or parties means a party or the parties to this Deed, and includes the officers, employees, agents and subcontractors of that party (and in the case of the Participant, the Participant's Personnel), and the party's successors and permitted substitutes or assigns (including, where applicable, any party's legal personal representative, guardian, executor, administrator, transferee, assignee, agent, liquidator or trustee in bankruptcy, and in the case of the AGD, and

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substituted department, agency or statutory body), all of whom are, respectively, bound by this Deed;

- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) a reference to a person, partnership, body corporate, unincorporated body, government or local authority or agency or other entity includes any of them;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to an agreement or document (including, without limitation a reference to this Deed, or a document attached to, annexed to or referred to by this Deed) is to the agreement or document as amended, varied, supplemented, notated or replaced, except to the extent prohibited by the Agreement or that other agreement or document;
- (m) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this document or any part of it; and
- (n) a reference to dollars and \$ is to Australian currency.

### **1.3 Precedence**

In the event that a conflict arises between the terms of this Deed and/or the terms of the NTLSL Deed appearing electronically on the NTLSL Website and/or the terms of any Contract, the following order of priority shall apply:

- (a) the terms of the NTLSL Deed excluding the Schedules (noting that if there is a conflict between the printed terms of this NTLSL Deed signed by the parties, and the NTLSL Deed appearing electronically on the NTLSL Website as at the Date of this Deed, then the NTLSL Deed appearing electronically on the NTLSL Website as at the Date of this Deed will prevail);
- (b) Schedule 1;
- (c) Orders;
- (d) Schedule 2;
- (e) Schedule 3;
- (f) the other Schedules; then
- (g) any other document incorporated by reference into this Deed.

## **2. TERM**

### **2.1 Commencement**

- (a) The terms of this Deed apply on and from the Operative Date or the Date of this Deed, whichever date is later.
- (b) For avoidance of doubt, if:
  - (i) the Participant is selected for inclusion onto the NTLSL after the Operative Date; and
  - (ii) submits a signed Deed as part of their AFI,this Deed is binding on and from the date the AGD signs this Deed.

## **2.2 Transition Period**

- (a) The Participant acknowledges that the Territory may continue to acquire Legal Services in accordance with pre-existing arrangements for existing matters and that there may be a transition period in which the Territory is not acquiring Legal Services from the NTLSL, or is acquiring Legal Services from both the NTLSL and under pre-existing arrangements.
- (b) The terms and conditions attaching to any transition period will be solely determined by the AGD.

## **3. OBJECTIVES OF THE LEGAL SERVICES LIST**

- (a) The Participant acknowledges that the objectives of the NTLSL include:
  - (i) reducing barriers to entry into the market of providing legal services to the Territory;
  - (ii) gathering and disseminating information as to the performance of legal service providers in the provision of Legal Services to the Territory and its Agencies; and
  - (iii) supporting the Territory and its Agencies as informed purchasers of Legal Services.
- (b) Subject to clauses 7(b) and 7(d), the Participant acknowledges and agrees to the AGD and the Territory collecting and using information as to the Participant's performance in provision of Legal Services to the Territory under this NTLSL and in disseminating that information to other Agencies within the Territory in whatever form may be considered appropriate from time to time.
- (c) The Participant acknowledges and agrees that the Participant's details and information submitted in the AFI, including updates to that information, will be disclosed to Agencies for their use in relation to the NTLSL.

## **4. RELIANCE ON CLAIMS MADE IN THE APPLICATION FOR INCLUSION**

- (a) The Participant's AFI has been accepted by the AGD on the basis of the claims made by the Participant in that AFI, which forms part of this Deed.
- (b) The Participant warrants the veracity of the information (including any claims) provided:
  - (i) in the AFI; and
  - (ii) subsequently in connection to their ongoing participation on the NTLSL;and acknowledges that the Territory specifically relies on this information whenever purchasing Legal Services from the NTLSL.
- (c) Notwithstanding any other provision of this Deed, the AGD may remove the Participant from the NTLSL, and terminate this Deed in accordance with clause 11, if it is found that the Participant provided false or misleading information.
- (d) The Participant must notify the AGD in writing within 72 hours of any change to information or circumstances contained in the AFI or relevant to clauses 4(b) or 6.

## **5. LEGAL SERVICES**

### **5.1 Overview**

- (a) The Participant acknowledges that it is one of a number of suppliers on the NTLSL which may be requested by the Territory to provide Legal Services, and that the Territory may add new suppliers to the NTLSL from time to time.
- (b) The Participant must comply with the Operational Rules as in force from time to time.

### **5.2 Legal Services to Territory departments, agencies or bodies**

The Participant agrees that a Territory department, agency or body that is not an agency under the Administrative Arrangements Order, or otherwise not required under Northern Territory Government policy to obtain legal services from the NTLSL may still elect to do so. In such a case, that department, agency or body is still considered an 'Agency' for the purposes of this Deed and may request Legal Services from the Participant in accordance with this Deed.

### **5.3 Participation No Guarantee of Work**

- (a) The Territory:
  - (i) is not obliged to purchase or acquire any Legal Services or volume of Legal Services from the Participant;
  - (ii) may at any time purchase or acquire services the same as, or similar to, the Legal Services from another supplier on the NTLSL;
  - (iii) may at any time purchase or acquire services the same as, or similar to, the Legal Services from Counsel;
  - (iv) may purchase or acquire Legal Services from any other supplier not on the NTLSL, subject to compliance with the Procurement Framework; and
  - (v) may at any time make alternative arrangements including but not limited to granting funding to legal aid or other non-government organisations which has the effect of reducing services obtained from supplier(s) on the NTLSL.
- (b) The Participant acknowledges and agrees that:
  - (i) whilst AGD has a role in assisting other Territory Agencies in obtaining Legal Services, the Territory (through its Agencies) must conduct and make purchasing decisions in accordance with relevant statutory obligations, including the *Financial Management Act* and (where relevant) the Procurement Framework;
  - (ii) the Territory, in obtaining Legal Services from the NTLSL, may impose additional conditions or requirements that Participants will be required to meet in order to be eligible to undertake work for an Agency or on specific matters. These conditions or requirements may include:
    - A. obtaining national or non-national security clearances;
    - B. compliance with conflict of interest requirements; and /or
    - C. any other matter of relevance to an Agency; and
  - (iii) all costs of participating in the NTLSL must be met by the Participant.

#### **5.4 Purchasing Legal Services**

Where the Territory requires Legal Services under the NTLSL, requests will be dealt with and Orders will be placed in accordance with the processes set out in the Operational Rules, as amended from time to time.

#### **5.5 List Rates**

- (a) The Participant acknowledges that the Territory may seek or negotiate with the Participant rates below the List Rates or request innovative pricing arrangements when obtaining Legal Services from the NTLSL.
- (b) The quoted amount provided by the Participant, or the agreed price for Legal Services, must not exceed the amount that would be produced had the quote or agreed price been calculated in accordance with the List Rates in effect at the time of the quote or agreed price (including in relation to costs and charges which a Participant is restricted from charging pursuant to the Default Terms and Conditions), unless the Territory determines that the amount is overall of greater value for money (for example, blended rates may exceed a lawyer's hourly rate but provide overall value for money to the Territory).

#### **5.6 Contracts for Legal Services**

- (a) Subject to clause 5.6(h), a Contract for the provision of any Legal Services is not formed until the Territory issues an Order for the Legal Services.
- (b) AGD may issue Orders on behalf of the Territory and its Agencies. Once AGD or the Territory issues the Order, the Participant will deal with the relevant Client Agency as if the Client Agency had issued the Order directly, subject to the Operational Rules.
- (c) The Territory will specify in the Order the precise Legal Services to be performed.
- (d) Each Order issued by the Territory will create a separate Contract between the Territory and the Participant in relation to the provision of the Legal Services specified in that Order.
- (e) The SFNT, as legislated legal provider for the Territory under the *Law Officers Act*, is entitled to liaise between the Client Agency and/or the Participant in respect of any Legal Services. The Participant must:
  - (i) accept input and instructions from the SFNT, on behalf of the Territory in relation to the Legal Services; and
  - (ii) on the request of SFNT, provide information, updates and copies of documents relating to the Legal Services to SFNT, at no additional charge.
- (f) The parties agree that the terms of each Contract will be those set out in the Default Terms and Conditions as appearing on the NTLSL Website at the date the relevant Contract is entered into.
- (g) The Participant acknowledges and agrees that when providing Legal Services to the Territory, it remains bound by the terms of this Deed.
- (h) The Participant may reject an Order for a Valid Reason, where Valid Reason means:
  - (i) where the Participant would have a Conflict;
  - (ii) where the Participant would have insufficiently skilled Personnel to perform the Legal Services within the timeframes required by the Client Agency; or
  - (iii) any other reason accepted in writing by the Territory.



## **6. PARTICIPANT'S WARRANTY**

- (a) The Participant warrants that at the Date of this Deed, and for the duration of this Deed that:
- (i) it is a legal practitioner or practice, engaging in practice in Australia that complies with all applicable State or Territory laws governing the legal profession, and is subject to:
    - A. the regulation of the relevant State or Territory law society; or
    - B. Part VIII B of the *Judiciary Act 1903* (Clth);
  - (ii) it has professional indemnity insurance which:
    - A. meets the requirements of the relevant State or Territory law society; and
    - B. is for an amount not less than that required under the Operational Rules from time to time;
  - (iii) it has public liability insurance for an amount of not less than that required under the Operational Rules from time to time;
  - (iv) it has workers compensation insurance as required by law;
  - (v) its nominated Personnel in Australia involved with the delivery of Legal Services are:
    - A. admitted and authorised to practise as required by the rules of; and
    - B. are not subject to any investigations or disciplinary proceedings by; the relevant State or Territory professional society, or the National Board on its establishment, as appropriate;
  - (vi) it has the expertise, capacity and capability to deliver the Legal Services described in the AFI (as updated from time to time);
  - (vii) it is financially viable;
  - (viii) it will comply with the Operational Rules as in force at any particular time.
- (b) Further to clause 6(a)(iii), the Participant also warrants that if it is a member of a limitation of liability scheme through a State or Territory law society or similar, it has a liability cap for an amount not less than that required under the Operational Rules from time to time.
- (c) If any warranty given in this clause 6 ceases to be valid or true, and in particular but without limitation, clause 6(a)(v), the Participant must notify AGD in writing of the circumstances relating to the change in status within 24 hours.

## **7. PERFORMANCE REPORTING FRAMEWORK**

- (a) The Participant acknowledges and agrees that its performance in providing Legal Services to the Territory under the NTLSL will be:
- (i) assessed and reported on by the Territory in accordance with the Performance Reporting Framework; and
  - (ii) collected and used by the AGD and the Territory, including being provided to Agencies on a confidential basis for the purpose of achieving the objectives of the NTLSL.

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- (b) Without limiting clause 7(a), the AGD and the Territory acknowledge and agree that information in relation to the Participant's performance in providing Legal Services to the Territory under the NTLSL is Confidential Information.
- (c) The Participant agrees that the AGD may, with prior written notice on the NTLSL Website, change, update, modify or adapt the Performance Reporting Framework from time to time.
- (d) The Participant acknowledges and agrees that the Territory and/or a Client Agency may impose additional performance management requirements, including reporting requirements, and that information collected in relation to these additional performance requirements is Confidential Information and may be shared between AGD, SFNT, the Territory and Agencies on a confidential basis.

## **8. VALUE ADD SERVICES**

The Participant agrees to provide Agencies who obtain Legal Services from the Participant, using the NTLSL, any of the Value Added Services listed in their AFI, when requested by the Territory to do so.

## **9. ADMINISTRATION OF THE NTLSL**

- (a) The Participant acknowledges and agrees that the AGD, on behalf of the Territory and the Territory's Agencies, will administer the NTLSL in accordance with this Deed, subject to the Operational Rules. Contact details of the AGD NTLSL manager can be located on the NTLSL Website.
- (b) To administer the NTLSL, the Participant acknowledges and agrees that the Participant's details and information submitted in the AFI, including updated information, will be disclosed to Agencies for their use in relation to the NTLSL.
- (c) The Participant acknowledges and agrees that the AGD may change the Operational Rules from time to time. Notice of any change and the date of its effect will be advised on the NTLSL Website.
- (d) The Participant acknowledges and agrees that the AGD may change the Default Terms and Conditions from time to time. Notice of any change and the date of its effect will be advised on the NTLSL Website. Changes to the Default Terms and Conditions will apply to all Contracts entered into on or after the date the changes take effect, but will not apply retrospectively to existing Contracts.
- (e) In administering the NTLSL, the Participant acknowledges and agrees that the AGD and the Territory may analyse and report on the data collected in relation to the operation of the NTLSL to a range of parties, including but not limited to Agencies, responsible Ministers, and any Parliamentary, Ministerial or Cabinet Committee, or to the Legislative Assembly or a Committee of the Legislative Assembly of the Territory.
- (f) The Participant must notify the AGD immediately on becoming aware of:
  - (i) the existence of a Conflict in relation to any matter it is acting on or has been requested to act on for the Territory or any Agency;
  - (ii) any disciplinary proceedings or orders made by a law society or other professional body against the Participant or its Personnel engaging in legal practice in Australia;
  - (iii) any adverse comments or findings made by a court, commission, tribunal, law society or other statutory or professional body regarding the conduct or

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performance of the Participant or impacting on the professional capacity/capability of its Personnel to deliver Legal Services;

- (iv) any unsettled judicial decisions against it relating to unpaid employee entitlements;
- (v) any other significant matters involving the Participant or its Personnel that may adversely impact on the Territory's or an Agency's compliance with Territory Government policy and legislation; and
- (vi) any non-compliance by the Participant or its Personnel with any judgment against it from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law.

## **10. CONFIDENTIALITY**

### **10.1 Confidential Information not to be disclosed**

- (a) Subject to clause 10.2, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### **10.2 Exceptions to obligations**

- (a) The obligations on the parties under this clause 10 will not be taken to have been breached to the extent that Confidential Information:
  - (i) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Deed;
  - (ii) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Deed related activities;
  - (iii) is disclosed by the AGD or the Territory to the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Territory or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly;
  - (iv) is shared by a party within its organisation, or in the case of the AGD and the Territory, with another Agency, with the Commonwealth of Australia or any other State or Territory of Australia, where this serves the party's legitimate interests;
  - (v) is authorised or required by law, including under this Deed, under a licence or otherwise, to be disclosed; or
  - (vi) is in the public domain otherwise than due to a breach of this clause 10.
- (b) Where a party discloses Confidential Information to another person pursuant to clauses 10.2(a)(i) to 10.2(a)(v), the party will notify the receiving person that the information is confidential.
- (c) In the circumstances referred to in clauses 10.2(a)(i), 10.2(a)(ii) and 10.2(a)(v), the party agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- (d) To avoid doubt, clauses 10.2(a)(iv) and 10.2(a)(v) includes the sharing of performance information between AGD, SFNT, the Territory and Agencies as

envisaged by clause 7 of this Deed and disclosure of information in order to administer and meet the objectives of the NTLSL.

## **11. TERMINATION OF DEED, REDUCTION IN SCOPE AND RESIGNATION FROM THE NTLSL**

### **11.1 Termination for Default**

- (a) The AGD may, with immediate effect, terminate this Deed for default, by written notice to the Participant, if the Participant:
  - (i) breaches a warranty provided for in clauses 4 or 6 of this Deed;
  - (ii) becomes aware that Personnel of the Participant have without written authorisation released Confidential Information of the Territory to a third party;
  - (iii) is found to have provided false or misleading information to the AGD or the Territory in respect to any aspect of their participation on the NTLSL;
  - (iv) *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Clth)*, or has an order made against it for the purpose of placing it under external administration;
  - (v) *being an individual or partnership* – becomes bankrupt or enters into a scheme of arrangement with creditors;
  - (vi) in the AGD's reasonable opinion, is no longer able to satisfy the Conditions for Participation;
  - (vii) fails to comply with the Operational Rules; or
  - (viii) in the AGD's reasonable opinion, no longer has the capacity and capability to provide Legal Services in accordance with this Deed.
- (b) The AGD may terminate this Deed for default, with immediate effect, if the Participant fails, within 20 Business Days of being provided with a notice of breach, to remedy a breach of this Deed, other than a breach of a term the subject of clause 11.1(a).
- (c) If this Deed is terminated for Default:
  - (i) the Participant may no longer participate, from the date of the termination, in the NTLSL with respect to entering any new Contract to provide Legal Services to the Territory; and
  - (ii) an existing Contract with the Participant under the NTLSL may, at the Territory's discretion, be terminated for default as well.

### **11.2 Termination or Reduction for Convenience**

The AGD may terminate this Deed, or reduce the scope of participation on the NTLSL, for any reason on 20 Business Days prior written notice to the Participant.

### **11.3 Resignation from the NTLSL**

The Participant may terminate this Deed by resigning from the NTLSL on provision of 20 Business Days prior written notice to the AGD. Notice must be sent to the NTLSL manager at the address set out on the NTLSL Website.

#### **11.4 Effect of Termination, Reduction or Resignation**

- (a) The termination or reduction in scope of this Deed, or resignation of the Participant from this Deed pursuant to clause 11.3, does not automatically terminate or otherwise affect the operation of any Contract entered into with the Territory pursuant to this Deed prior to the date of termination, reduction or resignation.
- (b) Where this Deed has been:
  - (i) terminated in accordance with this clause 11, or the Participant has elected to resign from the NTLSL, the Participant must not accept a new Order or an extension of an existing Contract entered into with the Territory prior to the date of termination or resignation; or
  - (ii) reduced in scope in accordance with clause 11.2, the Participant must not accept a new Order or an extension of an existing Contract entered into with the Territory prior to the date of reduction where such Order or Contract relates to Legal Services for a category of legal work from which the Participant has been removed.
- (c) Upon notice of:
  - (i) termination or resignation, the AGD will promptly remove the Participant from the NTLSL; or
  - (ii) reduction in scope, the AGD will promptly remove the Participant from one or more of the categories of legal work that the Participant was appointed to on the NTLSL.

### **12. COMPLIANCE WITH LEGISLATION AND POLICY**

- (a) The Participant agrees to comply with any Legislation or legislative instrument applicable to its performance of this Deed or a Contract.
- (b) When performing Legal Services for the Territory the Participant also agrees to comply with any Agency policies as notified to the Participant.

### **13. NOTICES**

#### **13.1 Form and Service of Notices**

Unless otherwise provided in this Deed, any notice must be in writing and given in one of the following ways:

- (a) by hand delivering to the relevant person;
- (b) by sending a letter through registered mail to the relevant address for service;
- (c) by sending a fax to the relevant fax number; or
- (d) by sending an electronic mail to the relevant email address,

specified in the details of the parties appearing at the start of this Agreement, or such other person, address, fax number or email address as may be advised by a party in writing from time to time.

#### **13.2 Receipt of Notices**

A notice given under clause 13.1 is deemed to be given, in the case of:

- (a) hand delivery, immediately on delivery;
- (b) registered mail, on the third Business Day after posting;

- (c) facsimile, on receipt of a complete and correct transmission report by the sender; and
  - (d) email, on receipt by the sender of the email of a notification that the message has been received at the addressee's mailbox, subject to no notification being sent by or on behalf of the addressee advising that the addressee is "out of office" or similar,
- but if such delivery or receipt is later than 4.00pm (addressee's time) on a Business Day, it is deemed to be received at 9.00am on the next Business Day in the place of receipt.

### **13.3 Notices given through NTLSL Website**

Nothing in this clause 13 affects the ability of the AGD to give notice through the NTLSL Website where this Deed, the Operational Rules or the Default Terms and Conditions provides for this.

## **14. DISPUTE RESOLUTION**

### **14.1 Procedure for dispute resolution**

- (a) In this clause 14, a reference to a 'party' is a reference to the Participant or the AGD, as the case may be.
- (b) The parties agree that a dispute arising under this Deed will be dealt with as follows:
  - (i) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
  - (ii) the officer responsible for management of this Deed for each party will use genuine steps to resolve any dispute by direct negotiation in the first instance;
  - (iii) if the dispute cannot be resolved, each party will nominate a representative not having any prior involvement in the dispute;
  - (iv) the representatives will use genuine steps to try to settle the dispute by direct negotiation between them;
  - (v) failing settlement within 10 Business Days after the nomination of a representative in accordance with clause 14.1(b)(iii), the parties may agree to refer the dispute to an independent third person with power:
    - A. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
    - B. to mediate and recommend some form of non-binding resolution;
  - (vi) the parties will cooperate fully with any process instigated under clause 14.1(b)(v) in order to achieve a speedy resolution; and
  - (vii) if:
    - A. a resolution is not reached within 20 Business Days after the dispute is referred to an independent third person in accordance with clause 14.1(b)(v); or
    - B. if no agreement as to an independent third person or resolution of dispute is reached following 30 Business Days commencing on the nomination of a representative in accordance with clause 14.1(b)(iii),either party may commence legal proceedings.

#### **14.2 Costs**

Each party will bear its own costs of complying with this clause 14, and the parties will bear equally the cost of any third person engaged under clause 14.1(b)(v), unless the third person determines that the costs should be borne in some other proportion, in which case the parties will bear the costs in that proportion.

#### **14.3 Continued performance**

Despite the existence of a dispute, the Participant will (unless requested in writing by the AGD not to do so) continue to perform any obligations under this Deed.

#### **14.4 Exemption**

This clause 14 does not apply to:

- (a) action by either party under or purportedly under any clause relating to termination, whether for convenience or for default;
- (b) legal proceedings by either party seeking urgent interlocutory relief; or
- (c) disputes in relation to the evaluation of a Participant by an Agency, which should be resolved between the Participant and the relevant Agency.

### **15. VARIATIONS**

- (a) With the exception of the Operational Rules, Default Terms and Conditions and (subject to clause 15(c)) Schedule 3, no variation to this Deed will be effective unless it is in writing and signed by the parties.
- (b) Variations will become effective on the date the last party signs the variation document, unless the variation document expressly indicates the variation will become effective on some other date.
- (c) Schedule 3 will be varied from time to time as the Participant updates their AFI in accordance with the Operational Rules, but not otherwise.

### **16. GOVERNING LAW**

This Deed is governed by, and construed according to, the law of the Northern Territory of Australia and the Courts of the Northern Territory at Darwin have jurisdiction to entertain any action in respect of, or arising out of, this Agreement.

### **17. NO ASSIGNMENT**

The Participant cannot assign, transfer or otherwise deal with this Deed or any rights or obligations under this Deed without the prior written consent of the AGD.





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.....  
Signature of Sole Director

.....  
Name of Sole Director

**EXECUTED** by **[PARTNERSHIP NAME OF  
THE PARTICIPANT]** (ABN: **[INSERT ABN]**) in  
the presence of: )  
)  
)

Date: ..... 2014

.....  
Signature of Partner

.....  
Signature of Partner

.....  
Name of Partner

.....  
Name of Partner

**SIGNED** by **[NAME]** (ABN: **[INSERT ABN]**) )  
in the presence of: )  
)

.....  
Signature of Participant

Date: ..... 2014

.....  
Signature of Witness

.....  
Name of Witness

## **SCHEDULE 1 OPERATIONAL RULES**

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### **1. INTRODUCTION**

The Northern Territory Legal Services List (NTLSL) is managed on behalf of the Northern Territory of Australia (Territory), by the Department of the Attorney-General and Justice (AGD) but can be accessed by any Agency in accordance with the Deed (including these Rules).

### **2. UPDATES TO PARTICIPANT INFORMATION**

#### **2.1 Updates on Any Change of Circumstances**

- (a) Participants on the NTLSL must update the details provided in their AFI whenever there is a significant change in any information provided as part of the application process.
- (b) Participants may update their List Rates at any time, subject to clauses 2.3 and 2.4.

#### **2.2 Annual Updates**

Notwithstanding clause 2.1, on each anniversary of the Operative Date, Participants on the NTLSL must update the details provided in their AFI, or confirm those details remain correct, including List Rates.

#### **2.3 Providing Updated Information and List Rates**

- (a) Where a Participant updates or changes any details provided in their AFI (including List Rates) under this clause 2, the Participant must provide the information to the AGD in writing, and in such format as the AGD may require from time to time.
- (b) Without limiting clause 2.3(a), if a Participant varies its List Rates, the Participant must notify AGD electronically of the varied List Rates by providing an update of the "List Rates and innovative fee arrangements" tables in Part 2 of the AFI (Tables 2.1, 2.2 and 2.3).

#### **2.4 Commencement of new List Rates**

- (a) Subject to clause 2.4(b), varied List Rates will become effective:
  - (i) if provided pursuant to clause 2.1(b), on the date the AGD receives the varied List Rates from the Participant pursuant to clause 2.3(b); or
  - (ii) if provided pursuant to clause 2.2, on the relevant anniversary of the Operative Date, or the date the AGD receives the varied List Rates from the Participant pursuant to clause 2.3(b), whichever is the later to occur.
- (b) Unless otherwise agreed in writing by AGD, new List Rates will not be applicable to any Contracts for Legal Services that were entered into prior to the date of notification of the new List Rates.

#### **2.5 Failure to Update or Confirm Details**

If a Participant fails to update or confirm details pursuant to a requirement of this clause 2, the AGD may, at the AGD's discretion, terminate this Deed or reduce the scope of the Deed and the Participant may be removed in part or whole from the NTLSL in accordance with clause 11 of the Deed.

### **3. CONDITIONS FOR PARTICIPATION**

- (a) Participants must maintain the capacity and expertise to deliver and provide professional services in the categories of legal work that the Participant was appointed to the NTLSL to deliver. Where a Participant no longer has, or has a diminished capacity, capability or expertise to provide the relevant professional service in a category, the Participant must notify AGD within 72 hours of becoming aware and amend their details accordingly. Participants may amend or update their details by submitting a form approved by AGD.
- (b) The AGD may reassess a Participant's ability to satisfy the Conditions for Participation:
  - (i) after each annual update of the Participant's details;
  - (ii) after any other update of the Participant's details; and
  - (iii) after any other event occurs, or information comes to the attention of the AGD, which the AGD considers may impact on the Participant's ability to meet the Conditions for Participation.
- (c) The Participant will be notified within 10 Business Days after the AGD's decision to reassess its ability to satisfy the Conditions for Participation.
- (d) When removing a Participant from the NTLSL because this Deed is terminated or reduced in scope by the AGD under clause 11 of the Deed, AGD may at its absolute discretion impose restrictions or conditions on that Participant in relation to reapplying for inclusion.

### **4. INSURANCE REQUIREMENTS**

- (a) For the purpose of clause 6 of the Deed, relevant values and limits for insurance are:
  - (i) subject to subclause 4(b), in respect of professional indemnity insurance, an amount not less than AU\$5 million per event and AU\$10 million in the aggregate;
  - (ii) in respect of public liability insurance, an amount of not less than AU\$10 million per event and unlimited in the number of occurrences;
  - (iii) in respect of a liability cap under a limitation of liability scheme, a liability cap of an amount not less than AU\$10 million.
- (b) Notwithstanding clause 4(a)(i), where a Participant has been included on the NTLSL in the sole category of Litigation – Child Welfare and Vulnerable Persons only, then the Participant may, at the sole discretion of AGD, hold professional indemnity insurance of an amount not less than AU\$2 million per event and AU\$10 million in the aggregate.
- (c) The Territory may require Participants to hold a higher level and/or additional type of insurance in any particular matter, or type of matter.
- (d) At the request of AGD, a Participant must provide proof that it holds any insurances required under the Deed or a Contract.
- (e) If a Participant fails to provide comply with to a requirement of this clause 4, the AGD may, at the AGD's discretion, terminate this Deed or reduce the scope of the Deed and the Participant may be removed in part or whole from the NTLSL in accordance with clause 11 of the Deed.

## 5. PURCHASING LEGAL SERVICES

- (a) In this clause 5, the following tiers are defined, subject to their meanings being revised from time to time under the Procurement Framework:

(i) Tier 1	Up to \$15,000
(ii) Tier 2	\$15,000 to less than \$100,000
(iii) Tier 3	\$100,000 to less than \$500,000
(iv) Tier 4	\$500,000 to \$2,000,000
(v) Tier 5	\$2,000,000 and over

- (b) As the NTLSL is established pursuant to the Procurement Framework, individual Orders made with Participants on the NTLSL are not subject to further procurement requirements. However, AGD intends to operate the NTLSL as follows:
- (i) when the Territory requires Legal Services for work estimated to be within Tier 1 or Tier 2, AGD may seek a quote from at least one supplier on the NTLSL;
  - (ii) when the Territory requires Legal Services for work estimated to be within Tier 3 or above, AGD may seek a select quote from a number of suppliers on the NTLSL, and/or may conduct a “mini-tender” where a number of suppliers on the NTLSL are invited to submit more formal proposals for conducting more significant matters; and/or
  - (iii) AGD may otherwise obtain Legal Services from one or more suppliers, whether on the NTLSL or not, in a manner consistent with the Procurement Framework.
- (c) A request for a quote template is contained in Schedule 4. The use of this template is not mandatory when obtaining Legal Services from the NTLSL.
- (d) In seeking quotes, the AGD may but is not limited to:
- (i) give one or more Participants the opportunity to quote;
  - (ii) impose a timeframe for the receipt of a quote;
  - (iii) seek quotes on a fixed price or other basis; and/or
  - (iv) require any quotes to be open for acceptance for a minimum period of 20 Business Days, or such other time as specified by the AGD.
- (e) Participants must provide quotes in such formats and including such information as AGD requests. A quote template for completion by Participants is contained in Schedule 5. Unless the Territory requires it, the use of this template by a Participant is not mandatory when responding to a request for a quote from the Territory, but is encouraged as it assists the Territory in assessing quotes.
- (f) Unless otherwise agreed, Participants are not entitled to charge the Territory any cost for preparation or submission of quotes.

## **6. PERFORMANCE REPORTING FRAMEWORK**

### **6.1 Per Matter Assessment**

- (a) Under the Performance Reporting Framework, the Territory may assess a Participant's performance when they provide Legal Services to the Territory.
- (b) At the conclusion of each relevant matter, or otherwise as agreed with AGD, a Client Agency will assess a Participant's performance against the following criteria:
  - (i) quality of service;
  - (ii) accuracy;
  - (iii) responsiveness;
  - (iv) understanding of Client Agency needs/requirements;
  - (v) professionalism and experience of Personnel working on the matter; and
  - (vi) value for money.
- (c) A score will be provided by the Client Agency against each criterion with respect to the Participant's performance. The scoring scale is as follows:
  - 1. Did not meet needs / expectations;
  - 2. Met some needs / expectations;
  - 3. Met all needs / expectations; and
  - 4. Exceeded all needs / expectations.
- (d) Client Agencies will complete and submit to AGD evaluations in the form requested by AGD assessing the above criteria. This information is Confidential Information and may be shared with other Agencies on a confidential basis. A Client Agency and/or AGD will provide Participants with details of the results of evaluations.
- (e) The Performance Reporting Framework will not replace any additional process or arrangements that the Territory/Client Agencies and Participants wish to use in order to deliver performance feedback.

### **6.2 Annual Reporting**

- (a) The Participant must provide reports to the AGD as required by this clause 6.2:
  - (i) within 20 Business Days of 1 January in each year, in respect of the 6 months immediately preceding that 1 January (or such shorter period as the Participant may have been on the NTLSL in that 6 month period); and
  - (ii) within 20 Business Days of 30 June in each year, in respect of the financial year immediately preceding that 30 June (or such shorter period as the Participant may have been on the NTLSL in that financial year); and
  - (iii) at any other time at the request of AGD on 10 Business Days' notice, in respect of such period as is requested by AGD.
- (b) The Participant must report to the AGD using the template approved from time to time by AGD (which may also be published on the NTLSL Website), that specifies the matters to be reported, including the requirements to report on:
  - (i) the total value of work undertaken for the Territory by the Participant during the relevant period; and

- (ii) any other information requested in writing by AGD on performance or information that is otherwise relevant to the operation of the NTLSL.
- (c) If a Participant fails to provide a report pursuant to a requirement of this clause 6.2, the AGD may, at the AGD's discretion, terminate this Deed or reduce the scope of the Deed and the Participant may be removed in part or whole from the NTLSL in accordance with clause 11 of the Deed.

### **6.3 Agency Specific Reporting**

Agencies may make their own arrangements with a Participant, for the Participant to report to the Agency regularly or on an ad hoc basis in respect of matters which the Participant is conducting on behalf of the Agency. The Participant must provide copies of any such reports to AGD at the same time as providing them to the Agency.

### **6.4 Other Reporting**

- (a) Participants must provide AGD and Agencies with such other reporting as requested from time to time, whether on a regular or ad hoc basis. Participants must not charge any additional fees to AGD or Agencies for this reporting. Requested reports are not limited to any particular subject matter, but may include things such as:
  - (i) status report on matters being handled and/or completed by a Participant during a particular period (eg monthly, quarterly, annually or other); and
  - (ii) financial reporting (for example, work billed to date/during a particular period; work in progress and/or estimated fees to finalise a matter) for matters, whether that is all Territory matters, or broken down by individual Agency and/or individual type of matter, or on any other basis.
- (b) If a Participant fails to provide a report pursuant to a requirement of this clause 6.4, the AGD may, at the AGD's discretion, terminate this Deed or reduce the scope of the Deed and the Participant may be removed in part or whole from the NTLSL in accordance with clause 11 of the Deed.

## **7. CATEGORIES OF LEGAL WORK**

- (a) The AGD may, at its discretion, vary, delete or add new categories of legal work to the NTLSL to meet operational requirements.
- (b) For variations to existing categories of legal work, it is anticipated that a Participant's ability to satisfy the Conditions for Participation would only be reassessed if the variation may impact on their ability to meet the Conditions for Participation.
- (c) For any new category of legal work, it is anticipated that a new application for inclusion process would be required.

## **8. CASE MANAGEMENT**

- (a) AGD may appoint one or more people to manage an individual Contract for Legal Services between a Participants and a Client Agency ("**Case Manager**").
- (b) A Case Manager may be a named person(s), or an area, section or division or AGD, and may be changed from time to time by AGD at its discretion.
- (c) Where a Case Manager is appointed for a Contract, the Participant must ensure that it complies with all administrative requirements of the Case Manager in respect of the Contract, in particular in relation to:
  - (i) invoicing of fees;
  - (ii) confirmation of new or further instructions;

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- (iii) variation of the Contract, particularly in respect of an increase to the total fees to be charged;
  - (iv) provision of copies of advices and documents; and
  - (v) reporting.
- (d) Where a Case Manager has advised the Participant that invoices under the Contract must be provided to the Case Manager in the first instance, Participants must ensure that all invoices are provided to the Case Manager, and not to the Client Agency. The Case Manager will liaise with the Client Agency to arrange for the Client Agency to pay the Participant.
- (e) Unless otherwise agreed with the Case Manager, the Participant must ensure that the Case Manager is provided with the following:
- (i) copies of all formal written advices provided to a Client Agency;
  - (ii) copies of all final documents provided to the Client Agency under an Order; and
  - (iii) copies of all formal reporting provided to the Client Agency.

## **9. NEW INSTRUCTIONS**

- (a) Where a Participant receives instructions on a new matter directly from an Agency, the Participant must immediately advise AGD in writing of the details of the new instructions, and seek confirmation or further direction from AGD prior to proceeding further with the new instructions.
- (b) If AGD considers that a Participant is wilfully or recklessly failing to comply with the requirements of this clause 9, the AGD may, at the AGD's discretion, terminate this Deed or reduce the scope of the Deed and the Participant may be removed in part or whole from the NTLSL in accordance with clause 11 of the Deed.

## **10. CHANGES TO THESE RULES**

- (a) Notification of any variation to these Rules will be made available to the Participant via the NTLSL Website.
- (b) It is the Participant's responsibility to check the NTLSL Website for updates.
- (c) Changes to these Rules may include a requirement for Participants to comply with additional requirements arising under separate documents, which may be in the nature of internal Northern Territory Government guidelines, directions, policies, statutory requirements or any other additional requirement of any nature.

## **SCHEDULE 2 DEFAULT TERMS AND CONDITIONS**

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The following terms and conditions apply where a Contract is created by the issue of an Order to the Service Provider by the Territory.

### **1. INTERPRETATION**

#### **1.1 Definitions**

In this Contract, unless the context indicates otherwise:

(a) <b>AGD</b>	means the Department of the Attorney-General and Justice (or any replacement department), acting on behalf of the Territory and the Client Agency;
(b) <b>Agency</b>	has the same meaning as in the Deed, and includes the Client Agency;
(c) <b>Application Inclusion (AFI) for</b>	means the application submitted by the Participant to the AGD seeking inclusion on the NTLSL, of which Part 2 of the AFI forms Schedule 3 to the Deed;
(d) <b>Business Day</b>	a day which is not a Saturday, Sunday or public holiday in either the place where an action is to be performed, or the place where the reciprocal part of an action is to occur; or if no such location is specified or reasonably ascertainable, in Darwin, Northern Territory, Australia;
(e) <b>Case Manager</b>	means any person who AGD appoints as a case manager for the Contract under the Operational Rules;
(f) <b>Client Agency</b>	means the Agency of the Territory which is instructing in relation to the particular Legal Services and includes any successor department or Agency;
(g) <b>Commencement Date</b>	means the date this Contract commences, being the date the Territory issues the signed Order to the Service Provider;
(h) <b>Confidential Information (of the Service Provider)</b>	means information that is by its nature confidential but does not include information which is or becomes public knowledge other than by a breach of this Contract;
(i) <b>Conflict</b>	means any matter, circumstance, interest, or activity directly or indirectly affecting the Service Provider, its Personnel or subcontractors (including holding any office, possessing any property, or having any professional or contractual obligation) which may, or may appear to, impair the ability of the Service Provider to provide the Legal Services to the Territory diligently and independently;



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(j) <b>Contract</b>	means this contract for the provision of Legal Services, formed between the Territory and the Service Provider by the Territory issuing an Order to the Service Provider;
(k) <b>Contract Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of this Contract;</li> <li>b. provided or required to be provided to the Territory as part of the Ordered Services; or</li> <li>c. derived at any time from the Material referred to in paragraph (a) or (b);</li> </ul>
(l) <b>Counsel</b>	means a barrister from the private bar, or a legal practitioner engaged as a barrister, briefed to advise or appear in tribunal or court proceedings, but does not include the Solicitor-General;
(m) <b>Deed</b>	means the NTLSL Deed between the AGD and the Service Provider and including schedules, attachments or documents incorporated by reference, including the Participant's AFI;
(n) <b>Existing Material</b>	means any Material, other than Contract Material, which is made available by the Service Provider for the purpose of this Contract, on or following the Commencement Date.  For the avoidance of doubt, Existing Material includes the Service Provider's template precedents library and: <ul style="list-style-type: none"> <li>a. any amendments to those precedents; or</li> <li>b. new precedents created independently of this Contract,</li> </ul> after the Commencement Date;
(o) <b>GST</b>	has the meaning it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Clth);
(p) <b>Information</b>	includes documents, software, information and data stored, provided or disclosed by any means, whether electronic, written or otherwise, and where relevant, includes information provided verbally or visually;
(q) <b>Intellectual Property</b>	includes: <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in</li> </ul>

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	<p>the industrial, scientific, literary or artistic fields,  but does not include:</p> <ul style="list-style-type: none"> <li>d. Moral Rights;</li> <li>e. the non-proprietary rights of performers; or</li> <li>f. rights in relation to Confidential Information;</li> </ul>
(r) <b>Legal Services</b>	means those professional services against each category of legal work that the Service Provider was appointed to the NTLSL to provide and outlined in the Order, but does not include the services of Counsel;
(s) <b>Legal Services List (NTLSL)</b>	means the list established by the AGD to enable the Territory to acquire Legal Services;
(t) <b>Legislation</b>	means a provision of a statute or subordinate legislation of the Northern Territory, the Commonwealth, or of a State, other Territory or local authority;
(u) <b>List Rates</b>	means the list rates in Tables 2.1, 2.2 and 2.3 of the Service Provider's AFI, including (where provided) innovative fee arrangements to provide services on a fixed lump sum fee arrangement, amended from time to time in accordance with the Operational Rules;
(v) <b>Material</b>	means anything in relation to which Intellectual Property rights arise;
(w) <b>Moral Rights</b>	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> <li>a. the right of attribution of authorship;</li> <li>b. the right of integrity of authorship; and</li> <li>c. the right not to have authorship falsely attributed;</li> </ul>
(x) <b>Operational Rules or Rules</b>	means the rules governing how the NTLSL will operate set out in Schedule 1 to the Deed, as may be modified from time to time by the AGD;
(y) <b>Order</b>	means the order issued by the Territory in accordance with the Deed requesting the provision of Legal Services by the Service Provider under which this Contract was formed;
(z) <b>Ordered Services</b>	means the Legal Services required by the Territory to be provided in accordance with this Deed process and includes all: <ul style="list-style-type: none"> <li>a. incidental services;</li> <li>b. functions required for the proper provision of those services; and</li> <li>c. the provision to the Territory of any Material specified in the Order;</li> </ul>

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(aa) <b>Payment Day</b>	means the day when the Territory’s system generates a payment transfer into the banking system for payment to the Service Provider;
(bb) <b>Permitted Acts</b>	means any of the following classes or types of acts or omissions: <ul style="list-style-type: none"> <li>a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;</li> <li>b. supplementing the Contract Material with any other Material; and</li> <li>c. using the Contract Material in a different context to that originally envisaged;</li> </ul> but does not include false attribution of authorship;
(cc) <b>Personnel</b>	means: <ul style="list-style-type: none"> <li>a. in relation to the Service Provider – any natural person who is a partner, officer, employee, agent or professional advisor of the Service Provider or of a subcontractor; and</li> <li>b. in relation to the Territory – any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor (other than the Service Provider) of the Territory;</li> </ul>
(dd) <b>Project Officer</b>	means the person identified as the Client Agency’s Project Officer in the Order and is otherwise the officer responsible for providing instructions to the Service Provider;
(ee) <b>Service Provider</b>	means the party identified in the Order as providing the Legal Services;
(ff) <b>SFNT</b>	means the Solicitor for the Northern Territory, established pursuant to section 8 of the <i>Law Officers Act</i> ;
(gg) <b>Specified Personnel</b>	means the Service Provider’s Personnel specified to perform the work specified in the Order for Legal Services;
(hh) <b>Territory</b>	means in general, the Client Agency, but according to the context, also means and includes the Northern Territory of Australia: <ul style="list-style-type: none"> <li>a. through the Client Agency;</li> <li>b. in its own right;</li> <li>c. through any other Agency;</li> <li>d. through any of the Territory’s other agencies, departments or bodies;</li> </ul>

	<ul style="list-style-type: none"> <li>e. through the AGD; and/or</li> <li>f. through the SFNT; and</li> </ul>
(ii) <b>Territory Material</b>	<p>means any Material:</p> <ul style="list-style-type: none"> <li>a. provided by the Territory to the Service Provider for the purposes of this Contract; or</li> <li>b. derived at any time from the Material referred to in paragraph (a).</li> </ul>

## 1.2 Interpretation

In this Contract, unless the contrary intention appears, if any conflict arises between the terms specified through the Order and these terms and conditions or the terms of the Deed the following order of priority will apply:

- (a) the terms of the Deed, excluding the Schedules;
- (b) Schedule 1 of the Deed;
- (c) the Order, with the Order further interpreted in the following order of priority:
  - (i) the correspondence from the Territory to the Service Provider confirming the Order;
  - (ii) the correspondence from the Territory to the Service Provider requesting a quote;
  - (iii) the request for a quote; then
  - (iv) the Service Provider's quote provided in response to the request for a quote;
- (d) this Contract;
- (e) Schedule 3 of the Deed;
- (f) the other Schedules of the Deed;
- (g) any other document incorporated by reference into the Deed; then
- (h) any other terms specified through the Order process.

## 1.3 Commencement

This Contract commences on and from the Commencement Date.

## 2. APPROVALS AND CONSENTS

In this Contract, whenever a clause provides that the Service Provider is required to:

- (a) obtain consent, approval, permission or similar from;
- (b) give information, notice or similar to; or
- (c) agree or similar with;

the Territory or the Client Agency on any matter ("**Consent**") the Service Provider must obtain, give or agree that Consent from, to or with:

- (d) if no Case Manager is appointed, the Project Officer; or
- (e) if a Case Manager is appointed, both the Case Manager and the Project Officer.

### **3. PERFORMANCE**

#### **3.1 Ordered Services**

- (a) The Service Provider must:
  - (i) perform the Ordered Services:
    - A. strictly in accordance with the scope outlined in the Order; and
    - B. to a standard recognised as a high professional standard by professional legal advisers;
  - (ii) comply with all applicable Client Agency, Territory and industry policies, standards and guidelines;
  - (iii) comply with the time frame for the performance of the Ordered Services specified through the Order process;
  - (iv) submit invoices and any required supporting documentation in the manner specified in clause 4.1 and the Operational Rules; and
  - (v) obtain all approvals and licences necessary to perform the Ordered Services in accordance with this Contract.
- (b) The Service Provider must keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Client Agency under a Contract to be determined.

#### **3.2 Subcontractors**

- (a) The Service Provider must not subcontract the performance of any part of the Ordered Services without the Territory's prior written approval.
- (b) The Territory may impose any conditions it considers appropriate when giving its approval under clause 3.2(a).

#### **3.3 Specified Personnel**

- (a) The Service Provider agrees that the Specified Personnel will perform work in relation to the Ordered Services in accordance with this Contract.
- (b) If Specified Personnel are unable to perform the work as required under clause 3.3(a), the Service Provider agrees to notify the Territory immediately.
- (c) The Service Provider agrees, at the request of the Territory acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Ordered Services.
- (d) If clause 3.3(b) or clause 3.3(c) applies, the Service Provider will provide replacement Personnel acceptable to the Territory at no additional cost and at the earliest opportunity.

#### **3.4 Conduct at Agency premises**

The Service Provider must, when using an Agency's premises or facilities for the purposes of providing Ordered Services, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities (including any smoke-free workplace policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.

### **3.5 Consultation with AGD, SFNT and other matters**

The Service Provider must:

- (a) where requested by SFNT, accept input and instructions from the SFNT, on behalf of the Client Agency, in relation to the Ordered Services;
- (b) on the request of AGD and/or SFNT, provide information and updates on the Ordered Services to AGD and/or SFNT, at no additional charge to the Client Agency or charge to AGD/SFNT;
- (c) promptly advise the AGD and/or SFNT, as well as the Client Agency, if, in the Service Provider's opinion, a matter involves or may involve an issue relating to the constitutional powers or status of the Territory or the Commonwealth, or their officers, courts, tribunals or statutory authorities, and if so, the Service Provider must seek instructions as to whether the Solicitor-General or other senior counsel should be briefed to advise on, or appear in, the matter;
- (d) seek instructions from the AGD and/or SFNT, as well as the Client Agency, on all strategic decisions at key phases of matters (for example, but without limitation, whether or not to settle or whether or not to appeal);
- (e) make recommendations to the AGD and/or SFNT, as well as the Client Agency, where it is considered that any matter of policy or legislative amendment arises in the course of the provision of the Ordered Services;
- (f) if at any time requested by the Client Agency, AGD or SFNT (and subject to any lien for unpaid fees), immediately deliver to the Client Agency, AGD or SFNT (as applicable) all working papers, advices and the other contents of files relating to the Ordered Services;
- (g) provide electronic copies of all advices and opinions created in the performance of the Ordered Services to the AGD, SFNT and the Client Agency at no charge to the Client Agency, AGD or the SFNT. Such advices may be included on the SFNT's opinions database and may be distributed to other government departments or instrumentalities at the discretion of the SFNT. The Service Provider must not provide copies of advices to any department or instrumentality other than the Client Agency without the written permission of the AGD or SFNT; and
- (h) advise the Client Agency of all instruments containing indemnities or guarantees pursuant to section 34 of the *Financial Management Act*.

### **3.6 Retention of Records**

The Service Provider must retain all records relating to the Ordered Services so as to comply with the Northern Territory Government Legal Services Disposal Schedule (or any amended version or replacement of that document) located at [www.nt.gov.au/justice](http://www.nt.gov.au/justice) or any amended web address.

## **4. FEES**

### **4.1 Invoices**

- (a) The Territory and the Service Provider may establish invoicing arrangements that will apply to the Ordered Services under this Contract.
- (b) The Service Provider must submit a correctly rendered invoice to the Territory. An invoice is correctly rendered if, and only if:

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- (i) it is in accordance with the invoicing arrangement between the Territory and Service Provider (if any);
  - (ii) it is correctly addressed and calculated in accordance with this Contract;
  - (iii) it relates to the Ordered Services that have been accepted by the Territory;
  - (iv) it is for an amount which does not exceed the agreed price and which price has been determined by either:
    - A. applying rates that do not exceed the Service Provider's relevant List Rate; or
    - B. applying rates that do exceed the Service Provider's relevant List Rate, if the Territory determines that the agreed price is overall of greater value for money (for example blended rates may exceed a lawyer's hourly rate but provide overall value for money to the Territory);and which is otherwise in compliance with this clause 4;
  - (v) it is a valid tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*; and
  - (vi) it complies with any requirements set pursuant to the Operational Rules.
- (c) If an invoice is not correctly rendered, the Territory will return it to the Service Provider for resubmission.

#### **4.2 Payment**

- (a) The Territory (via the Client Agency) will pay the invoiced amount to the Service Provider within 30 days after receiving a correctly rendered invoice.
- (b) Where a Client Agency wishes to contest the whole or part of a correctly rendered invoice, the Client Agency will pay the Service Provider (within 30 days) the value of the invoice less the value of the contested amount. Once the contested amount/s has / have been resolved, any outstanding amounts relating to those elements will be paid within 30 days after the date the contested amount/s was / were resolved.

#### **4.3 Fees, allowances and costs**

- (a) Unless otherwise agreed in writing by the Territory, the Service Provider agrees that the agreed rates set out in the Order will be fixed for the duration of this Contract.
- (b) Where the Order specifies a total or maximum amount payable, whether estimated or actual, and whether calculated on a time basis pursuant to agreed rates or otherwise:
  - (i) the total or maximum amount is not a quote, but operates as a capped total or maximum amount which the Service Provider is able to invoice, based on actual work done. The Service Provider is only entitled to invoice the Territory for the lower of the actual time, or the total or maximum amount specified in the Order; and
  - (ii) the Service Provider may not invoice the Territory for more than the total or maximum amount without agreeing with the Territory to vary the Order.
- (c) All invoices must be calculated by reference to the agreed rates set out in the Order and the Service Provider must be able to substantiate the actual work done and costs incurred on the Legal Services. Invoices must be suitably detailed to allow for identification of all work done and fees incurred. If invoices are not already itemised on issue, the Service Provider must provide detailed and itemised invoices to the Territory on request.

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- (d) Invoices for fees, allowances and costs which exceed the quoted amount inserted in the Order will not be paid by the Territory unless the parties vary, in writing, the total or maximum fees payable under this Contract.

**4.4 Excluded fees, allowances and costs**

The Service Provider is not entitled to charge for the following:

- (a) the cost of preparation or submission of any quotes for Legal Services;
- (b) the supervision of junior solicitors or graduate clerks;
- (c) instructions of an administrative nature issued to graduate clerks and administrative staff;
- (d) organising travel arrangements;
- (e) organising video conferencing;
- (f) arrangements for travel and appointments for witnesses or experts;
- (g) leaving telephone messages for someone to call back if unavailable;
- (h) perusal of email correspondence which involves no legal skill;
- (i) administrative tasks which involve no legal skill;
- (j) file administration;
- (k) the total time spent by clerks in filing and serving documents where multiple documents are filed/served;
- (l) a clerk or solicitor who is in attendance at a conference purely to obtain experience (not meaningfully participating in negotiations or discussions);
- (m) additional persons attending a conference (charge is to be for one person only) unless prior arrangement is discussed and agreed to by the Territory. Reference to such agreement should be given at the time the tax invoice is submitted for payment;
- (n) general inquiry telephone attendances or short personal attendances where a file is not to be opened and no written clarification is required;
- (o) briefing sessions held by or with the Territory, Client Agency, AGD and/or the SFNT, in relation to matters such as the operation of the NTLSL or general Agency or Northern Territory Government business;
- (p) drawing of tax invoices and any queries relating to those and/or amended tax invoices;
- (q) work and perusal time incurred due to the transfer of a file within the Service Provider;
- (r) providing electronic copies of all relevant documents, correspondence, advices and opinions to the AGD, SFNT, the Territory and/or the Client Agency;
- (s) provision of information to AGD and/or SFNT pursuant to clause 3.5(b);
- (t) the preparation and issue of reports under the Performance Reporting Framework;
- (u) the cost of local telephone calls, facsimile transmissions and postage and receiving faxes.

**4.5 Disbursements**

The Service Provider must:



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- (a) obtain the prior approval of the Territory for all significant disbursements before incurring them;
- (b) itemise all disbursements in invoices, and provided receipts or other evidence on request;
- (c) charge all non-local telephone, postage, facsimile charges and all courier services to the Territory at cost; and
- (d) charge photocopying at cost, noting the number of pages in disbursements.

**4.6 Travel (and associated disbursements)**

- (a) Without limiting clause 4.5, the Service Provider must obtain prior approval from the Territory for all travel and associated expenses.
- (b) All costs and expenses relating to travel must be at cost and receipts must be produced.
- (c) Except where alternative conditions are approved in advance, the following may be charged/claimed:
  - (i) reasonable expenses necessarily incurred for economy class travel and standard rate accommodation;
  - (ii) travel time, but only when work is being done, at the agreed hourly rate (inclusive of GST) and where this has been agreed in advance;
  - (iii) taxi fares, hire car and fuel expenses at cost.
- (d) The Service Provider is not entitled to charge or claim for incidental expenses (such as laundry, telephone, mini-bar and bar or coffee shop accounts).

**4.7 Briefing of Counsel/Agents/Experts**

- (a) Without limiting clause 4.5, the Service Provider must obtain the approval of the Territory prior to briefing counsel, agents or experts.
- (b) The Territory will not pay cancellation fees unless otherwise agreed in advance. If counsel, agents or experts are briefed for a matter that does not proceed, counsel, agents or experts will be paid only for work performed. The Service Provider is responsible for making these arrangements with the relevant counsel, agent or expert and the Territory will not bear any unauthorised costs.
- (c) In a matter where Counsel has been briefed at trial level and that matter is subsequently appealed, the Service Provider must obtain the further approval of the Territory in respect of engaging counsel, agents or experts in the appeal.
- (d) The Service Provider must include copies of all tax invoices from counsel/agents/experts in any tax invoice or disbursement tax invoice of the Service Provider. The lawyer with carriage of the matter must endorse the tax invoice from the counsel/agents/experts with a statement that the amount claimed is fair and reasonable and in accordance with their instructions.

**4.8 Taxes, duties and government charges**

- (a) Except as provided by this clause 4.8, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- (b) Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- (c) If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will

pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- (d) No party may claim or retain from the other party any amount in relation to a supply made under this Contract before the first party has deducted from the amount any input tax credit or decreasing adjustment which the first party is entitled to.

#### **4.9 Superannuation**

The parties acknowledge that the Territory is not required to make any superannuation contributions in connection with this Contract.

### **5. INTELLECTUAL PROPERTY**

#### **5.1 Use of Territory Material**

Where the Territory provides Territory Material to the Service Provider:

- (a) the Territory grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Territory Material for the purposes of this Contract; and
- (b) the Service Provider agrees to use Territory Material strictly in accordance with any conditions or restrictions imposed by the Territory.

#### **5.2 Rights in Contract Material**

- (a) Intellectual Property in all Contract Material vests or will vest in the Territory.
- (b) Clause 5.2(a) does not affect the ownership of Intellectual Property in:
  - (i) any Territory Material incorporated into Contract Material; or
  - (ii) any Existing Material.
- (c) The Service Provider grants to (or will procure for) the Territory, its Agencies and the SFNT a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any Existing Material referred to in clause 5.2(b)(ii), in conjunction with the Contract Material.
- (d) The Territory grants to the Service Provider a permanent, irrevocable, world-wide, royalty-free, non-exclusive licence, subject to clause 6, to use, reproduce, adapt, sub-license and exploit the Contract Material for the purpose of providing Legal Services to the Territory.
- (e) The Service Provider warrants that:
  - (i) it is entitled; or
  - (ii) it will be entitled at the relevant time,to deal with the Intellectual Property in the Existing Material in the manner provided for in this clause 5.2.

#### **5.3 Moral Rights**

- (a) Where the Service Provider is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Territory or any person claiming under or through the Territory.
- (b) If clause 5.3(a) does not apply, the Service Provider agrees:
  - (i) to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Territory or any

person claiming under or through the Territory (whether occurring before or after the consent is given); and

- (ii) on request – to provide the executed original of any such consent to the Territory.
- (c) This clause 5.3 does not apply to any Territory Material incorporated in the Contract Material.

## **6. CONFIDENTIALITY OF OFFICIAL INFORMATION AND OTHER SECURITY OBLIGATIONS**

### **6.1 Definition**

In this clause 6, **Official Information** means any Information developed, received or collected by or on behalf of the Territory to which the Service Provider gains access under or in connection with this Contract, and includes this Contract Material and the terms of this Contract.

### **6.2 Confidentiality of Official Information**

- (a) The Service Provider will not, without the prior written authorisation of the Territory, disclose any Official Information to any person or another Territory Agency, department, agency or body (unless required to do so by law).
- (b) The Service Provider is authorised to provide Official Information to:
  - (i) those Service Provider Personnel and subcontractors who require access for the purposes of this Contract, and
  - (ii) AGD and SFNT.
- (c) The Service Provider agrees, on request by the Territory at any time, to arrange for the Personnel and subcontractors referred to in clause 6.2(b)(i) to give a written undertaking in a form acceptable to the Territory relating to the use and non-disclosure of Official Information.
- (d) The Service Provider agrees to secure all Official Information in its possession or control against loss and unauthorised access, use, modification or disclosure.
- (e) At the expiry or early termination of this Contract, unless instructed otherwise by the Territory, the Service Provider must immediately return all Official Information in its possession or control to the Territory.

### **6.3 Other security obligations of Service Provider**

- (a) The Service Provider agrees to comply with the Territory's security policies and any additional security requirements specified through the Order process or otherwise directed by the Territory, and any variations or additions to those requirements as notified by the Territory from time to time.
- (b) The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 6 and will provide details of these procedures to the Territory on request.

## **7. PRIVACY**

- (a) The Service Provider agrees, in providing the Ordered Services:
  - (i) not to do any act or engage in any practice which, if done or engaged in by the Client Agency or the Territory, would be a breach of the *Information Act* or an Information Privacy Principle under the *Information Act*; and

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- (ii) to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters specified through the Order process or otherwise notified by the Territory or the Client Agency, to the extent that they are consistent with the Information Privacy Principles and the *Information Act*.
- (b) The Service Provider agrees to notify the Territory immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 7.
- (c) The Service Provider acknowledges that it may, from time to time, hold information or records on its files which are either:
  - (i) records which the Service Provider and its contractors and subcontractors collect or handle on behalf of the Territory which constitute "government information" pursuant to section 4 of the *Information Act*; or
  - (ii) records of the Service Provider (which are the property of the Service Provider as opposed to the property of the Territory); and which may be accessible to the public pursuant to the provisions of the *Information Act*
- (d) The Service Provider must:
  - (i) comply with the provisions of the *Information Act* in its role as a "Contract Service Provider" to the Territory to the extent that it holds "government information" on its hard copy or electronic files or other records which are provided for in the Act;
  - (ii) on receipt of a request from the Territory or any member of the public for access to "government information" (the **Request**), promptly advise the Territory of the Request;
  - (iii) promptly deliver to the Territory, if requested, all relevant files and records in respect of the Request so as to enable the Territory to determine what information (if any) is required to be disclosed to the person making the Request;
  - (iv) comply with the Information Privacy Principles contained in the Schedule to the *Information Act*;
  - (v) comply with any practices and procedures notified to the Service Provider which have been implemented by the Territory, the Client Agency, the AGD and/or the SFNT for the purpose of safeguarding custody and ensuring proper preservation of "government information";
  - (vi) give the Territory all other assistance reasonably requested in order that the Territory is able to comply with the *Information Act*;
  - (vii) utilise the proposed privacy statement (below) when collecting personal information on behalf of the Territory when it is not for an exempt purpose under the *Information Act*. Exempt purposes include but are not limited to where the collection of personal information does not concern a proceeding before a court or tribunal, it is not for the purposes of investigating an unlawful activity, required by law, requested by or on behalf of a law enforcement agency within the Northern Territory or for statistical purposes.

*Proposed Privacy Statement*

*[Name of Service Provider] will only use the personal information you provide for the purpose of legal advice to, and/or representation of the Northern Territory. Should you wish to change or add to any of this information, you may contact the solicitor you saw initially. Such information shall not be disclosed to any third party without your consent, or as required by law. It*

*will be kept securely for the length of the proceeding or the period in which the legal advice is utilised and archived thereafter when it will be subject to the Northern Territory Government Legal Services Disposal Schedule.*

## **8. CONFIDENTIAL INFORMATION OF THE SERVICE PROVIDER**

### **8.1 Confidential Information not to be disclosed**

Subject to clause 8.2, the Territory will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

### **8.2 Exceptions to obligations**

- (a) The obligations on the Territory under this clause 8 will not be taken to have been breached to the extent that Confidential Information:
  - (i) is disclosed by the Territory to its Personnel solely in order to comply with obligations, or to exercise rights, under the Deed or this Contract;
  - (ii) is disclosed to the Territory's internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
  - (iii) is disclosed by the Territory to the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Territory or in response to a request by the Legislative Assembly or a Committee of the Legislative Assembly;
  - (iv) is shared by the Territory within the Territory's organisation, or with another Territory department, agency, or body, with the Commonwealth of Australia or any other State or Territory of Australia, where this serves the Territory's legitimate interests;
  - (v) is authorised or required by law to be disclosed; or
  - (vi) is in the public domain otherwise than due to a breach of this clause 7.
- (b) Where the Territory discloses Confidential Information to another person pursuant to clauses (a)(i) - (a)(iv), the Territory will notify the receiving person that the information is confidential.
- (c) In the circumstances referred to in clauses (a)(i), (a)(ii) and (a)(iv), the Territory agrees not to provide the Information unless the receiving person agrees to keep the Information confidential.
- (d) To avoid doubt, clauses 8.2(a)(iv) and 8.2(a)(v) includes the sharing of performance information between the Territory and other agencies as envisaged by clause 7 of the Deed and disclosure of information in order to administer and meet the objectives of the NTLSL.

## **9. TERMINATION OR REDUCTION IN SCOPE OF ORDERED SERVICES**

### **9.1 Termination for convenience**

- (a) The Territory may by notice, at any time and in its absolute discretion terminate this Contract, or reduce the scope of any Ordered Services, immediately.
- (b) The Service Provider agrees, on receipt of a notice of termination or reduction:
  - (i) to stop or reduce work as specified in the notice;

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- (ii) to take all available steps to minimise loss resulting from that termination or reduction; and
  - (iii) to continue work on any part of any Ordered Services not affected by the notice.
- (c) In the event of termination under clause 9.1(a), the Territory will be liable only:
- (i) to pay any fees due under a Contract relating to Ordered Services completed before the date of termination;
  - (ii) to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Ordered Services not covered under clause 9.1(c)(i); and
  - (iii) to pay any allowance and meet any costs unavoidably incurred under a Contract before the effective date of termination.
- (d) The Territory will not be liable to pay amounts under clause 9.1(c)(i) and 9.1(c)(ii) which would, added to any fees already paid to the Service Provider under a Contract, together exceed the fees specified through the Order process.
- (e) In the event of a reduction in the scope of any Ordered Services, the Territory's liability to pay fees, allowances or costs under any relevant Contract will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Ordered Services.
- (f) The Service Provider will not be entitled to compensation for loss of prospective profits.

**9.2 Termination for default**

- (a) If a party fails to satisfy any of its obligations under this Contract, then the other party – *if it considers that the failure is:*
- (i) *not capable of remedy* – may, by notice, terminate this Contract immediately; or
  - (ii) *capable of remedy* – may, by notice require that the failure be remedied within a reasonable time as specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- (b) The Territory may also by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- (i) *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Clth), or has an order made against it for the purpose of placing it under external administration;
  - (ii) *being an individual or partnership* – becomes bankrupt or enters into a scheme of arrangement with creditors; or
  - (iii) is terminated for default, reduced in scope or resigns from the NTLSSL under clause 11 of the Deed.

**9.3 Variation**

- (a) The terms of this Contract, including any specific requirements identified in the Order or during the Order process, may not be varied unless the Territory and the Service Provider have agreed to that variation in writing.
- (b) Notwithstanding clause 9.3(b), no such variation amounts to a variation of the Default Terms and Conditions in Schedule 2 of the Deed.

## **10. OPERATIONAL CLAUSES**

### **10.1 Audit and access**

- (a) The Service Provider agrees:
  - (i) to give the Territory (through the Project Officer and/or Case Manager, or any persons authorised in writing by the Project Officer and/or Case Manager, or any superior officer to or authorised delegate of the Project Officer and/or Case Manager), access to premises where Ordered Services are being performed;
  - (ii) to permit those persons to inspect and take copies of any Material relevant to the Ordered Services; and
  - (iii) that without limiting the generality of clause 10.1(a)(i), the Territory may require access to monitor the Service Provider's work health and safety and environmental compliance in connection with the provision of the Ordered Services.
- (b) The rights referred to in clause (a) are subject to:
  - (i) the Territory providing reasonable prior notice;
  - (ii) reasonable security procedures in place at the premises; and
  - (iii) if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- (c) The Auditor-General and the Information Commissioner and their delegates are persons authorised for the purposes of this clause 10.1.
- (d) This clause 10.1 does not detract from the statutory powers of the Auditor-General or the Information Commissioner and their delegates.

### **10.2 Inquiries**

- (a) The Service Provider agrees to provide free of charge all reasonable assistance requested by the Territory in respect of any inquiry concerning the Service Provider's performance of Ordered Services.
- (b) Without limitation to the generality of clause 10.2(a):
  - (i) the assistance to be provided by the Service Provider under clause 10.2(a) will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Personnel to provide information or answer questions on any matters relevant to or arising from this Contract which might reasonably be expected to be within the knowledge of the Service Provider; and
  - (ii) an inquiry referred to in clause 10.2(a) will include any administrative or statutory review, audit or inquiry (whether within or external to the Territory), any requests for information or documents directed to the Territory and any inquiry conducted by the Legislative Assembly or any committee of the Legislative Assembly.
- (c) The Project Officer will endeavour to notify the Service Provider as early as possible of any assistance required under clause 10.2(a), provided always that the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- (d) This clause 10.2 survives expiration or termination of this Contract.

### **10.3 Extension of provisions to subcontractors and Personnel**

- (a) In this clause 10.3, **Requirement** means an obligation, condition, restriction or prohibition binding on the Service Provider under this Contract.
- (b) The Service Provider agrees to ensure that:
  - (i) its subcontractors and Personnel comply with all relevant Requirements; and
  - (ii) any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.
- (c) The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Agency.

## **11. REPORTING AND PERFORMANCE MEASUREMENT**

### **11.1 Reports**

The Service Provider must provide the Territory with any reports specified in the Order.

### **11.2 Performance measurement**

- (a) The Territory will monitor the Service Provider's performance in delivering the Services by the use of any performance measurement assessment notified to the Service Provider from time to time, as the Territory, in its absolute discretion, deems appropriate.
- (b) In addition, the Territory will complete evaluations in accordance with the Operational Rules.
- (c) The Territory may at its discretion, provide a copy of details of the results of evaluations to the Participant.
- (d) The Territory will provide a copy of the completed evaluation form to AGD.

## **12. DISPUTE RESOLUTION**

### **12.1 Interpretation**

In this clause 12, a reference to a 'party' is a reference to the Service Provider or the Territory, as the case may be.

### **12.2 Procedure for dispute resolution**

The parties agree that a dispute arising under this Contract will be dealt with as follows:

- (a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- (b) the officer responsible for management of this Contract for each party will use genuine steps to resolve any dispute by direct negotiation in the first instance;
- (c) if the dispute cannot be resolved, each party will nominate a representative not having any prior involvement in the dispute;
- (d) the representatives will use genuine steps to try to settle the dispute by direct negotiation between them;
- (e) failing settlement within 10 Business Days after the nomination of a representative in accordance with clause 12.2(c), the parties may agree to refer the dispute to an independent third person with power:



- (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
- (ii) to mediate and recommend some form of non-binding resolution;
- (f) the parties will cooperate fully with any process instigated under clause 12.2(e) in order to achieve a speedy resolution; and
- (g) if:
  - (i) a resolution is not reached within 20 Business Days after the dispute is referred to an independent third person in accordance with clause 12.2(e); or
  - (ii) if no agreement as to an independent third person or resolution of dispute is reached following 30 Business Days commencing on the nomination of a representative in accordance with clause 12.2(c),either party may commence legal proceedings.

### **12.3 Costs**

Each party will bear its own costs of complying with this clause 12, and the parties will bear equally the cost of any third person engaged under clause 12.2(e) , unless the third person determines that the costs should be borne in some other proportion, in which case the parties will bear the costs in that proportion.

### **12.4 Continued performance**

Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Territory not to do so) continue to perform any Ordered Services.

### **12.5 Exemption**

This clause 12 does not apply to:

- (a) action by either party under or purportedly under any clause relating to termination, whether for convenience or for default; or
- (b) legal proceedings by either party seeking urgent interlocutory relief.

## **13. LIABILITY**

### **13.1 Proportionate liability regimes excluded**

To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Contract.

### **13.2 Indemnity**

- (a) The Service Provider indemnifies the Territory from and against any:
  - (i) cost or liability incurred by the Territory;
  - (ii) loss of or damage to property of the Territory; and
  - (iii) loss or expense incurred by the Territory in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Territory,arising from:
  - (iv) a breach by the Service Provider of this Contract; and/or
  - (v) an unlawful or negligent act or omission of the Service Provider or its Personnel in connection with this Contract.

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- (b) The Service Provider's liability to indemnify the Territory under clause 13.2(a) will be reduced proportionately to the extent that any unlawful or negligent act or omission of the Territory or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- (c) The right of the Territory to be indemnified under this clause 13.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Territory is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- (d) This clause 13 survives the expiration or termination of this Contract.

## **14. INSURANCE**

- (a) Without limiting the Service Provider's obligations under this Contract, the Service Provider must, and must ensure that any subcontractor will, arrange and maintain the insurances specified:
  - (i) in the Deed and Operational Rules; and
  - (ii) where any higher level and/or additional type of insurance is specified in the Order for this Contract or otherwise required by the Territory in respect of the Ordered Services, that higher level and/or additional type of insurance,for the term of this Contract or, in respect of professional indemnity insurance, the term of this Contract plus seven years.
- (b) The Territory will not have to reimburse the Service Provider for any extra premium in relation to additional insurances or additional level of coverage required under the Order.

## **15. NOTICES**

### **15.1 Format, addressing and delivery**

- (a) A notice under this Contract is only effective if it is in writing, and dealt with as follows:
  - (i) if given by the Service Provider to the Territory – addressed to the Territory at the address specified in the Order or as otherwise notified by the Territory; or
  - (ii) if given by the Territory to the Service Provider – given by an authorised officer or delegate of the Territory and addressed (and marked for attention) as specified in the Order or as otherwise notified by the Service Provider.
- (b) A notice is to be:
  - (i) signed by the person giving the notice and delivered by hand; or
  - (ii) signed by the person giving the notice and sent by pre-paid post; or
  - (iii) transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

### **15.2 When effective**

- (a) A notice is deemed to be effected:
  - (i) if delivered by hand – upon delivery to the relevant address;
  - (ii) if sent by post – on the third Business Day after posting to the relevant address; or

- (iii) if transmitted electronically – upon actual receipt by the addressee.
- (b) A notice received after 4.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected at 9.00am on the next Business Day in that place.

## **16. GENERAL PROVISIONS**

### **16.1 Conflict of interest**

- (a) The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict, except as disclosed in writing to the Territory, exists or is likely to arise in the performance of the Ordered Services.
- (b) The Service Provider must use its best endeavours (including making all appropriate enquiries) to ensure that:
  - (i) a situation does not arise which may result in a Conflict; and
  - (ii) any Personnel of the Service Provider do not engage in any activity or obtain any interests likely to conflict with or restrict the Service Provider in providing Services to the Territory fairly and independently.
- (c) If, a Conflict arises, or appears likely to arise, the Service Provider agrees:
  - (i) to notify the Territory immediately;
  - (ii) to the extent possible, noting legal professional obligations, make full disclosure of all relevant information relating to the Conflict; and
  - (iii) to take any steps the Territory reasonably requires to resolve or otherwise deal with the Conflict.

### **16.2 Co-operation**

- (a) The parties intend to conduct themselves for the purposes of the performance of this Contract in the spirit of co-operation and good faith. For avoidance of doubt, the spirit of co-operation and good faith does not override or limit the provisions of this Contract.
- (b) The Territory will co-operate with the Service Provider by:
  - (i) making available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Ordered Services, and
  - (ii) setting priorities for the Ordered Services.
- (c) The Service Provider must co-operate with any other service provider appointed by the Territory (including SFNT when it is providing services similar to or related to the Ordered Services in-house) to ensure the integrated and efficient carrying on of the Territory's operations and must provide such reasonable assistance to other service providers as the Territory may reasonably request, and at no additional cost to the Territory.

### **16.3 Relationship of parties**

- (a) The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of the Territory, nor does the Service Provider have any power or authority to bind or represent the Territory.
- (b) The Service Provider agrees:
  - (i) not to misrepresent its relationship with the Territory; and

- (ii) not to engage in any misleading or deceptive conduct in relation to the Services.

#### **16.4 Waiver**

- (a) A failure or delay by a party to exercise any right or remedy it holds under this Contract at law does not operate as a waiver of that right.
- (b) A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

#### **16.5 Assignment**

The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Contract without the Territory's prior written approval.

#### **16.6 Survival**

Unless the contrary intention appears, the expiry or earlier termination of this Contract will not affect the continued operation of any provision relating to:

- (a) licensing of Intellectual Property;
- (b) confidentiality;
- (c) privacy;
- (d) books and records;
- (e) audit and access;
- (f) security;
- (g) an indemnity;
- (h) inquiries; or
- (i) any other provision which expressly or by implication from its nature is intended to continue.

#### **16.7 Compliance with Legislation**

The Service Provider agrees to comply with any Legislation applicable to its performance of this Contract.

### **17. APPLICABLE LAW**

- (a) This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Northern Territory of Australia.
- (b) The parties submit to the non-exclusive jurisdiction of the Northern Territory of Australia and the Courts of the Northern Territory at Darwin have jurisdiction to entertain any action in respect of, or arising out of, this Contract.

## **SCHEDULE 3 PART TWO OF THE APPLICATION FOR INCLUSION**

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*Note: Part 2 of the Participant's AFI will be attached as a separate document.*

## **SCHEDULE 4 REQUEST FOR QUOTE (RFQ) TEMPLATE**

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*Note: The use of this template by the Territory is not mandatory when obtaining Legal Services from the NTLSL.*

### **Agency Details**

<b>Agency Name</b>	<agency name>
<b>Division</b>	<division/section>
<b>Date of Request</b>	<date>
<b>Reference</b>	<Agency reference number/name>

### **Agency Contacts**

<b>Agency Project Officer (Instructing Officer)</b>	Name: <name> Phone: <phone> Email: <email>
<b>Approved by Director</b>	<signature or name of Director>

### **Work Specification for Legal Services**

<b>Subject</b>	<descriptive reference for files and correspondence>
<b>Issue</b>	<Detailed description of Legal Services required>
<b>Background Information</b>	<Relevant background>
<b>Previous Legal Advice</b>	<Details of relevant previous legal advice>
<b>Relevant legislation or policy</b>	<Details of any relevant legislation or policy>

### **Documents**

<b>Relevant documents</b>	<List any documents attached or which can be provided on request>
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### **Timing**

<b>Proposed Commencement Date</b>	<Insert start date or timeframe>
<b>Proposed Completion Date</b>	<Insert completion date or timeframe>
<b>Timeframes/ Milestones</b>	<Insert proposed due date /milestones for Legal Services>

## SCHEDULE 5 PARTICIPANT QUOTE TEMPLATE

*Note: The use of this template by a Participant is providing a quote is not mandatory unless the Territory requires it*

### Service Provider Details

<b>Service Provider and Address for Notices</b>	<p>&lt; Service Provider&gt;          &lt;Service Provider ABN or ACN&gt;          &lt;Service Provider Physical Address&gt;          &lt;Service Provider Postal Address&gt;          &lt;Service Provider Main Telephone&gt;          &lt;Service Provider Main Fax&gt;</p>
<b>Service Provider Representative</b>	<p>Name: [Insert Details]          Title: [Insert Details]          Email: [Insert Details]          Telephone: [Insert Details]          Fax number: [Insert Details]</p>

### Specified Personnel

<b>Specified Personnel</b>	<p>&lt;Insert proposed any specified Personnel who will provide the Legal Services and their relevant level and rates eg&gt;          &lt;name&gt; &lt;level eg Partner&gt; &lt;List Rate&gt;          &lt;name&gt; &lt;level eg Senior Associate Lawyer&gt; &lt;List Rate&gt;          &lt;where relevant, detail specific expertise of Personnel relevant to the Agency's request for a quote&gt;</p>
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### Work Plan and Fees

<b>Work Plan</b>	<p>&lt;Indicate proposed work plan, setting out:</p> <ul style="list-style-type: none"> <li>• Stage(s) of work and description of work to be done in each stage</li> <li>• estimated timeframes for commencement/completion of stage(s)</li> <li>• estimate of number of hours of work required for stage(s), broken down according to the Personnel who will perform the work</li> <li>• details of how you will meet the Agency's requirements and timeframes&gt;</li> </ul>
<b>Disbursements</b>	<p>&lt;indicate what disbursements, charges, out of pocket costs etc may or will be incurred in the matter eg filing fees, accommodation, witness expenses. If amounts are known or can be estimated, indicate amounts &gt;</p>
<b>Fee Calculation</b>	<p>&lt;List Rates will apply by default. Indicate total time per Personnel by List Rate eg:          &lt;name&gt; &lt;level&gt; &lt;total time&gt; x &lt;List Rate&gt; = &lt;subtotal&gt;          &lt;name&gt; &lt;level&gt; &lt;total time&gt; x &lt;List Rate&gt; = &lt;subtotal&gt;</p> <p>Alternatively, if you wish to propose alternative arrangements such as innovative fees or discounts (refer clause 5.5 of NTLSSL Deed), please detail them here&gt;</p>

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<b>Total/Maximum Fees, Charges and Disbursements</b>	<Insert total maximum costs based on above work plan, according to the proposed charging method (ie List Rates/innovative fees/other proposal)> <Where other charges and disbursements are known or estimated, state these. Otherwise clarify/qualify what costs (eg disbursements) are excluded>
<b>Proposed Invoicing and Payment Details</b>	<When fees will be invoiced (e.g. monthly; in instalments against milestones; or at the completion of the services)>

**Other Matters**

<b>Further information required</b>	<set out details of any further instructions or clarification you may require>
<b>Disclaimers and Qualifications</b>	<set out any qualifications on the above, eg assumptions you have made in completing your work plan>
<b>Other Information</b>	<Any other information you wish to provide in support of your quote>

**Signing**

<b>Date of Quote</b>	<date>
<b>Validity Period of Quote (minimum 20 Business Days)</b>	
<b>Signature</b>	
<b>Print Name</b>	